

Adopted	Rejected
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COMMITTEE REPORT

YES:	6
NO:	5

MR. SPEAKER:

Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1824, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana code concerning
- 3 utilities and transportation.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 7 UPON PASSAGE]: **Sec. 84.1. (a) This section applies to a**
- 8 **transaction involving:**
- 9 **(1) a merger, consolidation, reorganization, or union involving**
- 10 **an energy company;**
- 11 **(2) a tender offer or contract for the purchase, acquisition,**
- 12 **assignment, or transfer of stock of an energy company; or**
- 13 **(3) a transaction described in subdivision (1) or (2) that:**
- 14 **(A) is combined with one (1) or more transactions**
- 15 **described in subdivision (1) or (2);**
- 16 **(B) is conducted within three (3) years of a transaction**

- 1 described in subdivision (1) or (2); and
 2 (C) causes at least fifty percent (50%) of the shares of an
 3 energy company's stock that are:
 4 (i) outstanding at the time of the transaction; and
 5 (ii) entitled to vote generally in the election of the energy
 6 company's board of directors;
 7 to be beneficially held, directly or indirectly, immediately
 8 after the transaction by persons other than the persons
 9 that beneficially held, directly or indirectly, the shares of
 10 the energy company's stock immediately before the
 11 transaction.
- 12 (b) This section does not apply to a transaction involving an
 13 exempt wholesale generator or a direct or an indirect affiliate of an
 14 exempt wholesale generator if either the generator or the affiliate:
 15 (1) is under the jurisdiction of the federal energy regulatory
 16 commission; and
 17 (2) either:
 18 (A) is not controlled by; or
 19 (B) is not an affiliate of;
 20 an energy utility that engages in retail sales in Indiana.
- 21 (c) As used in this section, "energy company" means an energy
 22 utility or an energy utility holding company.
- 23 (d) As used in this section, "energy utility" means an energy
 24 utility (as defined in IC 8-1-2.5-2) that provides retail energy
 25 service (as defined in IC 8-1-2.5-3) to more than forty thousand
 26 (40,000) retail gas or electric customers in Indiana.
- 27 (e) As used in this section, "energy utility holding company"
 28 means a corporation, company, partnership, or limited liability
 29 company that owns an energy utility.
- 30 (f) Except as provided in subsection (g), without the prior
 31 approval of the commission, a person may not, except in an
 32 intracorporate transaction, consummate a transaction described
 33 in subsection (a) that causes at least fifty percent (50%) of the then
 34 outstanding shares of an energy company's stock entitled to vote
 35 generally in the election of the energy company's directors to be
 36 beneficially held, directly or indirectly, immediately after the
 37 transaction by persons other than the persons that beneficially
 38 held, directly or indirectly, the shares of the energy company's

1 stock immediately before the transaction.

2 (g) If the transaction to be consummated under subsection (f) is
3 a transaction described in subsection (a)(3), approval by the
4 commission is required only for the particular transaction that
5 causes at least fifty percent (50%) of the then outstanding shares
6 of the energy company's stock entitled to be voted generally in the
7 election of the energy company's directors to be beneficially held,
8 directly or indirectly, immediately after the transaction by persons
9 other than the persons that beneficially held, directly or indirectly,
10 the shares of the energy company's stock immediately before the
11 particular transaction.

12 (h) An energy company that seeks approval of a transaction
13 subject to this section shall file an application with the commission.
14 In determining whether to approve a transaction subject to this
15 section, the commission shall consider the following:

16 (1) The financial, technical, and managerial capacity of the
17 new entity.

18 (2) The effect of the merger on the provision and cost of
19 service to customers of the energy utility involved in the
20 transaction.

21 (i) After notice and hearing, the commission shall approve a
22 transaction subject to this section if the commission:

23 (1) considers the effect of the transaction on the provision and
24 cost of service to customers; and

25 (2) finds that the transaction will result in a new entity with
26 the technical, financial, and managerial capacity to provide
27 adequate and reliable retail energy service.

28 (j) The commission shall, after notice and public hearing, enter
29 an order either approving or disapproving a transaction subject to
30 this section not later than one hundred thirty-five (135) days after
31 the date on which an energy company files an application with the
32 commission for approval of the proposed transaction. If the
33 commission fails to issue an order within the one hundred
34 thirty-five (135) day period allowed the commission under this
35 subsection, the transaction shall be considered approved by
36 operation of law as of the first day following the one hundred
37 thirty-five (135) day period described in this subsection. If the
38 transaction is approved by the commission or considered approved

under this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction. Notwithstanding any other law, rule, or order, an order entered under this section is not subject to a petition for rehearing to the commission, and an appeal from the order must be filed in the Indiana supreme court not more than twenty (20) days after the date of the order.

(k) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving an energy company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of an energy company;

is not required under this section, commission approval of the transaction is not required under any other provision of this title.

(l) This chapter does not:

(1) prevent the holding of an energy company's stock that is lawfully acquired before April 1, 2007; or

(2) prohibit a merger, consolidation, reorganization, or union involving an energy company if the transaction was lawfully completed before April 1, 2007.

(m) This section does not nullify, restrict, or limit the authority of the commission under sections 83 and 84 of this chapter.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) As used in this SECTION, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:

(1) provides retail electric service to:

(A) more than four hundred thousand (400,000); but

(B) less than five hundred thousand (500,000);

retail electric customers in Indiana on April 1, 2007; and

(2) has a service area that includes, among other counties, the counties described in IC 36-7-7.6-1.

(c) As used in this SECTION, "electric utility holding company" means a corporation, company, partnership, or limited liability company that owns an electric utility.

(d) As used in this SECTION, "regional public power authority" means a multicounty public power authority established

1 to:

- 2 (1) acquire the generation, transmission, and distribution
 3 assets of an electric utility or an electric utility holding
 4 company;
 5 (2) own and operate the assets described in subdivision (1);
 6 and
 7 (3) act as a nonprofit utility to provide retail electric service
 8 to residential, commercial, industrial, and governmental
 9 customers within the participating units.

10 (e) The commission shall study the feasibility of establishing a
 11 regional public power authority. The study required by this
 12 subsection must include the following:

- 13 (1) An examination of the need to:
 14 (A) enact new state statutes or regulations; or
 15 (B) amend existing state statutes or regulations;
 16 to permit the establishment of a regional public power
 17 authority.
 18 (2) A valuation of the electric utility's generation,
 19 transmission, and distribution assets to be acquired by the
 20 regional public power authority.
 21 (3) A study of:
 22 (A) existing and potential funding sources or other
 23 mechanisms, including the use of eminent domain,
 24 available to the regional public power authority to acquire
 25 the assets described in subdivision (2); and
 26 (B) the method for determining each participating unit's
 27 respective:
 28 (i) contribution toward the acquisition of the assets; and
 29 (ii) ownership interest in the assets acquired.
 30 (4) A study of similarly sized public power authorities
 31 operating in the United States, including information on the
 32 assets, expenses, operations, management, and customer bases
 33 of the authorities, to the extent the information is available.
 34 (5) A cost benefit analysis of establishing a regional public
 35 power authority.
 36 (6) A determination of whether the establishment of a regional
 37 public power authority is in the public interest.
 38 (7) An examination of any other issues concerning the

1 establishment of a regional public power authority that the
2 commission considers relevant or necessary for study.

3 (f) As necessary to conduct the study required by subsection (e),
4 the commission may:

5 (1) make use of the commission's existing resources and
6 technical staff;

7 (2) employ or consult with outside analysts, engineers, experts,
8 or other professionals; and

9 (3) consult with other:

10 (A) public power authorities operating in the United
11 States; or

12 (B) state regulatory commissions that:

13 (i) regulate public power authorities; or

14 (ii) have conducted similar studies.

15 (g) Not later than December 31, 2007, the commission shall
16 provide a report to the following on the commission's findings from
17 the study conducted under subsection (e):

18 (1) The regulatory flexibility committee established by
19 IC 8-1-2.6-4. The report provided to the regulatory flexibility
20 committee under this subsection must be separate from the
21 commission's annual report to the regulatory flexibility
22 committee under IC 8-1-2.5-9(b).

23 (2) The legislative council. The report provided to the
24 legislative council under this subsection must be in an
25 electronic format under IC 5-14-6.

26 (3) The northwestern Indiana regional planning commission
27 established by IC 36-7-7.6-3.

28 (4) The county executive of each county in the electric utility's
29 service area on April 1, 2007.

30 (h) The report required by subsection (g) must contain the
31 following:

32 (1) A summary of the commission's findings with respect to
33 each issue set forth in subsection (e).

34 (2) Recommendations to the regulatory flexibility committee
35 on any legislation needed to establish a regional public power
36 authority.

37 (3) Any other findings or recommendations that the
38 commission considers relevant or useful to the entities

1 described in subsection (g).

2 (i) Before the commission submits its report under subsection
3 (g), any entity described in subsection (g) may require the
4 commission to provide one (1) or more status reports on the
5 commission's study under subsection (e). A status report provided
6 to the legislative council under this subsection must be in an
7 electronic format under IC 5-14-6.

8 (j) The regulatory flexibility committee:

9 (1) shall review the analyses and recommendations of the
10 commission contained in:

11 (A) any status reports provided by the commission under
12 subsection (i); and

13 (B) the commission's final report provided under
14 subsection (g); and

15 (2) may recommend to the general assembly any legislation
16 that is necessary to establish a regional public power
17 authority in Indiana, if the regulatory flexibility committee
18 determines that the establishment of a regional public power
19 authority is in the public interest.

20 (k) This SECTION does not empower the commission or any
21 entity described in subsection (g) to require an electric utility to
22 disclose confidential and proprietary business plans and other
23 confidential information without adequate protection of the
24 information. The commission and all entities described in
25 subsection (g) shall exercise all necessary caution to avoid
26 disclosure of confidential information supplied under this
27 SECTION.

28 SECTION 3. An emergency is declared for this act.

(Reference is to HB 1824 as introduced.)

and when so amended that said bill do pass.

Representative Crooks